

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S.L. ANDERSON & SONS, INC., *et al.*,

Plaintiffs,

v.

PACCAR, INC., *et al.*,

Defendants.

CASE NO. C18-0742-JCC

ORDER

Pursuant to the parties' stipulation and proposed order regarding discovery of electronically stored information ("ESI") (Dkt. No. 59), the Court ENTERS the following protective order:

A. General Principles

1. An attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. The proportionality standard set forth in Federal Rule of Civil Procedure 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

1 **B. ESI Disclosures**

2 Within thirty (30) days after the Rule 26(f) conference, or at a later time if agreed to by
3 the parties, each party shall disclose:

4 1. Custodians. The five custodians most likely to have discoverable ESI in their
5 possession, custody, or control. The custodians shall be identified by name, title, connection to
6 the instant litigation, and the type of the information under his/her control.

7 2. Non-Custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared
8 drives, servers, etc.), if any, likely to contain discoverable ESI.

9 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
10 contain discoverable ESI (*e.g.*, third-party email and/or mobile device providers, “cloud” storage,
11 etc.) and, for each such source, the extent to which a party is (or is not) able to preserve
12 information stored in the third-party data source.

13 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI
14 (by type, date, custodian, electronic system, or other criteria sufficient to specifically identify the
15 data source) that a party asserts is not reasonably accessible under Federal Rule of Civil
16 Procedure 26(b)(2)(B).

17 **C. Preservation of ESI**

18 The parties acknowledge that they have a common law obligation to take reasonable and
19 proportional steps to preserve discoverable information in the party’s possession, custody, or
20 control. With respect to preservation of ESI, the parties agree as follows:

21 1. Absent a showing of good cause by the requesting party, the parties shall not be
22 required to modify the procedures used by them in the ordinary course of business to back up
23 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their
24 possession, custody, or control.

25 2. All parties shall supplement their disclosures in accordance with Federal Rule of
26 Civil Procedure 26(e) with discoverable ESI responsive to a particular discovery request or

1 mandatory disclosure where that data is created after a disclosure or response is made (unless
2 excluded under sections (C)(3) or (D)(1)-(2) below).

3 3. Absent a showing of good cause by the requesting party, the following categories
4 of ESI need not be preserved:

- 5 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 6 b. Random access memory (RAM), temporary files, or other ephemeral data
7 that are difficult to preserve without disabling the operating system.
- 8 c. On-line access data such as temporary internet files, history, cache,
9 cookies, and the like.
- 10 d. Data in metadata fields that are frequently updated automatically, such as
11 last-opened dates (see also section (E)(5)).
- 12 e. Back-up data that are substantially duplicative of data that are more
13 accessible elsewhere.
- 14 f. Server, system, or network logs.
- 15 g. Data remaining from systems no longer in use that is unintelligible on the
16 systems in use.
- 17 h. Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or
18 from mobile devices (*e.g.*, iPhone, iPad, Android, and Blackberry
19 devices), provided that a copy of all such electronic data is routinely saved
20 elsewhere (such as on a server, laptop, desktop computer, or “cloud”
21 storage).

22 **D. Privilege**

23 1. With respect to privileged or work-product information generated after the filing
24 of the complaint, parties are not required to include any such information in privilege logs.

25 2. Activities undertaken in compliance with the duty to preserve information are
26 protected from disclosure and discovery under Federal Rule of Civil Procedure 26(b)(3)(A) and

1 (B).

2 3. Information produced in discovery that is protected as privileged or work product
3 shall be immediately returned to the producing party, and its production shall not constitute a
4 waiver of such protection.

5 4. Privilege Log Based on Metadata. The parties agree that privilege logs shall
6 include a unique identification number for each document and the basis for the claim (attorney-
7 client privileged or work-product protection). For ESI, the privilege log may be generated using
8 available metadata, including author/recipient or to/from/cc/bcc names, the subject matter or
9 title, and date created. Should the available metadata provide insufficient information for the
10 purpose of evaluating the privilege claim asserted, the producing party shall include such
11 additional information as required by the Federal Rules of Civil Procedure.

12 **E. ESI Discovery Procedures**

13 1. On-Site Inspection of Electronic Media. Such an inspection shall not be permitted
14 absent a demonstration by the requesting party of specific need and good cause or by agreement
15 of the parties.

16 2. Search Methodology. The parties shall timely attempt to reach agreement on
17 appropriate search terms, or an appropriate computer- or technology-aided methodology, before
18 any such effort is undertaken. The parties shall continue to cooperate in revising the
19 appropriateness of the search terms or computer- or technology-aided methodology.

20 In the absence of agreement on appropriate search terms, or an appropriate computer- or
21 technology-aided methodology, the following procedures shall apply:

- 22 a. A producing party shall disclose the search terms or queries, if any, and
23 methodology that it proposes to use to locate ESI likely to contain
24 discoverable information. The parties shall meet and confer to attempt to
25 reach an agreement on the producing party's search terms and/or other
26 methodology.

1 b. If search terms or queries are used to locate ESI likely to contain
2 discoverable information, a requesting party is entitled to no more than
3 five additional terms or queries to be used in connection with further
4 electronic searches absent a showing of good cause or agreement of the
5 parties. The five additional terms or queries, if any, must be provided by
6 the requesting party within 14 days of receipt of the producing party's
7 production.

8 c. Focused terms and queries should be employed; broad terms or queries,
9 such as product and company names, generally should be avoided. Absent
10 a showing of good cause, each search term or query returning more than
11 250 megabytes of data is presumed to be overbroad, excluding Microsoft
12 PowerPoint files, image and audio files, and similarly large file types.

13 d. The producing party shall search both non-custodial data sources and ESI
14 maintained by the custodians identified above.

15 3. Format. The parties agree that ESI will be produced to the requesting party with
16 searchable text, in a format to be decided between the parties. Acceptable formats include, but
17 are not limited to, native files, multi-page TIFFs (with a companion OCR or extracted text file),
18 single-page TIFFs (only with load files for e-discovery software that includes metadata fields
19 identifying natural document breaks and also includes companion OCR and/or extracted text
20 files), and searchable PDF. Unless otherwise agreed to by the parties, files that are not easily
21 converted to image format, such as spreadsheet, database, and drawing files, should be produced
22 in native format.

23 4. De-duplication. The parties may de-duplicate their ESI production across
24 custodial and non-custodial data sources after disclosure to the requesting party.

25 5. Metadata Fields. If the requesting party seeks metadata, the parties agree that only
26 the following metadata fields need be produced: document type; custodian and duplicate

1 custodians; author/from; recipient/to, cc, and bcc; title/subject; file name and size; original file
2 path; date and time created, sent, modified, and/or received; and hash value.

3
4 Presented by:

5 HAGENS BERMAN SOBOL SHAPIRO LLP

6 By s/ Steve W. Berman

Steve W. Berman (WSBA No. 12536)

7 s/ Jerrod C. Patterson

8 Jerrod C. Patterson (WSBA No. 43325)

1301 Second Avenue, Suite 2000

9 Seattle, WA 98101

Telephone: (206) 623-7292

10 Facsimile: (206) 623-0594

steve@hbsslaw.com

11 jerrodp@hbsslaw.com

12 James C. Shah (*Pro Hac Vice*)

13 Natalie Finkelman Bennett (*Pro Hac Vice*)

SHEPHERD, FINKELMAN, MILLER &

14 SHAH, LLP

475 White Horse Pike

15 Collingswood, NJ 08107

Tel: 856-858-1770

16 Fax: 866-300-7367

17 jshah@sfmslaw.com

nfinkelman@sfmslaw.com

18 James E. Cecchi (*Pro Hac Vice*)

19 Caroline F. Bartlett (*Pro Hac Vice*)

20 CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.

5 Becker Farm Road

21 Roseland, NJ 07068

(973) 994-1700

22 jcecchi@carellabyrne.com

23 cbartlett@carellabyrne.com

24 Richard J. Burke (*Pro Hac Vice*)

Zachary A. Jacobs (*Pro Hac Vice*)

25 QUANTUM LEGAL LLC

513 Central Avenue, Suite 300

26 Highland Park, IL 60035

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1 Telephone: 847-433-4500
2 rich@qulegal.com
3 zachary@qulegal.com

4 *Attorneys for Plaintiffs*
5 *s/ William R. Squires III*

6 William R. Squires III, WSBA No. 4976
7 CORR CRONIN LLP
8 1001 Fourth Avenue, Suite 3900
9 Seattle, Washington 98154-1051
10 Telephone: (206) 625-8600
11 Fax: (206) 625-0900
12 E-mail: rsquires@corrchronin.com

13 Anthony Pisciotto (*pro hac vice*)
14 Clifford M. Laney (*pro hac vice*)
15 Danny Lallis (*pro hac vice*)
16 PISCIOTTI MALSCH
17 30 Columbia Turnpike, Suite 205
18 Florham Park, NJ 07932
19 Telephone: 973-245-8100
20 Fax: 973-245-8101
21 Email: apisciotti@pmlegalfirm.com
22 claney@pmlegalfirm.com
23 dlallis@pmlegalfirm.com

24 *Attorneys for Defendants*

25 PURUSANT TO STIPULATION, IT IS SO ORDERED.

26 DATED this 1st day of April 2019.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE